

LABATON KELLER SUCHAROW LLP
Carol C. Villegas (pro hac vice)
cvillegas@labaton.com
Michael P. Canty (pro hac vice)
cvillegas@labaton.com
Danielle Izzo (pro hac vice)
Dizzo@labaton.com
Jake Bissell-Linsk (pro hac vice)
jbissell-linsk@labaton.com
140 Broadway
New York, NY 10005
Tel: (212) 907-0700

DECHERT LLP

Brenda R. Sharton (pro hac vice)
brenda.sharton@dechert.com
Benjamin M. Sadun (SBN 287533)
benjamin.sadun@dechert.com
One International Place
100 Oliver Street
Boston, MA 02110
Telephone: (617) 728-7100

Counsel for Defendant Flo Health, Inc.

[Additional Counsel Listed Below]

LATHAM & WATKINS LLP
Andrew B. Clubok (pro hac vice)
andrew.clubok@lw.com
555 Eleventh Street NW, Suite 1000
Washington, D.C. 20004
Telephone: 202.637.2200

Melanie M. Blunschi (SBN 234264)
melanie.blunschi@lw.com
Kristin Sheffield-Whitehead (SBN 304635)
kristin.whitehead@lw.com
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 395-5942

Michele D. Johnson (SBN 198298)
michele.johnson@lw.com
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626
Telephone: (714) 540-1235

GIBSON, DUNN & CRUTCHER LLP

Elizabeth K. McCloskey (SBN 268184)
EMcCloskey@gibsondunn.com
Abigail A. Barrera (SBN 301746)
ABarrera@gibsondunn.com
One Embarcadero Center, Suite 2600
San Francisco, CA 94111-3715
Telephone: 415.393.8200

*Counsel for Defendant Meta Platforms, Inc.
(formerly known as Defendant Facebook, Inc.)*

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ERIC FRASCO, et al., individually and on behalf of all other similarly situated,

Plaintiffs.

V.

FLO HEALTH, INC., et al.,

Defendants.

Case No. 3:21-CV-00757-JD

**UPDATED JOINTLY PROPOSED
REVISIONS TO PROPOSED
PRELIMINARY JURY INSTRUCTIONS**

Trial Date: July 21, 2025
Time: 8:30 am
Judge: Hon. James Donato
Ctrm: 11 – 19th Floor, SF

1 The parties have reviewed the Court's proposed preliminary instructions and jointly
2 propose the following modifications:

3 1. In Instruction No. 2, the parties propose clarifying that Meta was known as
4 Facebook during the relevant time period to avoid potential confusion, as the jury will see and hear
5 many references to Facebook in documents and testimony. Specifically, the parties propose adding
6 the following language:

7 The plaintiffs are Erica Frasco, Sarah Wellman, Jennifer Chen, Tesha

8 Gamino, and Autumn Meigs. The defendants are Flo Health and Meta.

9 During the time period relevant to this case, Meta was known as
10 Facebook. Documents and witnesses may use the names Meta and
11 Facebook interchangeably.

12 2. Also in the Instruction No. 2, the parties propose correcting the reference to the
13 "California Information Privacy Act" to reflect that the claim alleged against Meta arises under
14 the "California Invasion of Privacy Act."

15 3. Finally, in Instruction No. 10, the parties suggest that the Court remove references
16 to Google and update the list of Custom App Events at issue in light of Plaintiffs' settlement with
17 Google.

18 The proposed revised instructions follow.

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INSTRUCTION NO. 2

CLAIMS AND DEFENSES

To help you follow the evidence, I will give you a brief summary of the parties' positions.

The plaintiffs are Erica Frasco, Sarah Wellman, Jennifer Chen, Tesha Ghamino, and Autumn Meigs. The defendants are Flo Health and Meta. During the time period relevant to this case, Meta was known as Facebook. Documents and witnesses may use the names Meta and Facebook interchangeably. All five plaintiffs have claims against Flo Health in connection with their use of the Flo Period and Ovulation Tracker app for women (“Flo App”). Three plaintiffs – Chen, Ghamino, and Wellman – also have claims against Meta.

11 Plaintiffs allege that Flo Health shared Flo App users' menstrual and sexual health
12 information with Meta and violated the California Confidentiality of Medical Information Act,
13 invaded their privacy, and breached the terms of its Privacy Policy. Plaintiffs Chen, Gamino, and
14 Wellman also allege that Meta violated the [California Invasion of Privacy Act](#). Plaintiffs have the
15 burden of proving each claim by a preponderance of the evidence as to each defendant.

16 Flo Health denies all of plaintiffs' claims. Flo Health alleges as affirmative defenses that
17 users consented to the alleged information sharing and that users did not file their lawsuit within
18 the time permitted by the statute of limitations. Flo has the burden of proving each affirmative
19 defense by a preponderance of the evidence.

20 Meta denies the claim of plaintiffs Chen, Gamino, and Wellman. Meta alleges as an
21 affirmative defense that these plaintiffs did not file their lawsuit within the time permitted by the
22 statute of limitations. Meta has the burden of proving its affirmative defense by a preponderance
23 of the evidence.

INSTRUCTION NO. 10

STIPULATIONS OF FACT

The parties have agreed to certain facts that I will now read to you. You must treat these facts as having been proved.

1. Plaintiff Erica Frasco is a citizen of the State of New Jersey who downloaded the Flo App.
 2. Plaintiff Sarah Wellman is a citizen of the State of California who downloaded the Flo App.
 3. Plaintiff Jennifer Chen is a citizen of the State of California who downloaded the Flo App.
 4. Plaintiff Tesha Gamino is a citizen of the State of California who downloaded the Flo App.
 5. Plaintiff Autumn Meigs is a citizen of the State of Ohio who downloaded the Flo App.
 6. Defendant Flo Health, Inc. (“Flo”) is the developer of the Flo App.
 7. Defendant Meta Platforms, Inc. (“Meta”) is a technology company that, among other things, offers free tools like ~~the~~ a Facebook SDK to allow businesses to build unique and customized solutions to serve their clients.
 8. Plaintiffs first filed a lawsuit against Flo based on purported injuries arising from their use of the Flo App on January 29, 2021.
 9. Plaintiffs first filed a lawsuit against Meta based on purported injuries arising from their use of the Flo App on June 7, 2021.
 10. Flo was created in 2015 and launched the Flo App in 2016.
 11. During the Class Period, the Flo App was available for download on the iOS and Android app stores.
 12. The Flo App is a mobile application that can be used to track periods and pregnancy.

- 1 13. Plaintiffs Chen, Frasco, Gamino, and Meigs downloaded the Flo App to track
 2 their menstrual cycles. Plaintiff Wellman downloaded the Flo App to track her
 3 menstrual activity and figure out the best day to get pregnant.
- 4 14. During the Class Period, ~~Google and~~ Meta ~~both~~ offered a Facebook SDK to app
 5 developers.
- 6 ~~15. Flo incorporated the Google Analytics for Firebase SDK (“GA for Firebase~~
 7 ~~SDK”) into the Flo App between September 2018 and February 2019.~~
- 8 ~~156. Flo incorporated code from ~~the~~a Facebook SDK into the Flo App throughout the~~
 9 Class Period.
- 10 ~~17. Flo incorporated the Fabric SDK into the Flo App prior to the deprecation of~~
 11 ~~Fabric in 2020.~~
- 12 168. The Custom App Event names at issue in this lawsuit are:
- 13 • “R_CHOOSE_GOAL”
- 14 • “R_SELECT_LAST_PERIOD_DATE”
- 15 • “R_SELECT_CYCLE_LENGTH”
- 16 • “R_SELECT_PERIOD_LENGTH”
- 17 • “R_AGE_CHOSEN_PERIODS”
- 18 • “R_AGE_CHOSEN_PREGNANCY”
- 19 • “R_AGE_CHOSEN_PREGNANCY_METHOD”
- 20 • R_PREGNANCY_METHOD”
- 21 • “R_PREGNANCY_METHOD_DATE”
- 22 • “R_PREGNANCY_WEEK_CHOSEN”
- 23 • “R_PREGNANCY_WEEK_CHOSEN_UNKNOWN”
- 24 • “SESSION_CYCLE_DAY_FIRST_LAUNCH”
- 25 179. Flo shared the Custom App Events in Paragraph 165 that I just read to you with
 26 ~~Google and~~ Meta.
- 27
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1 Dated: July 20, 2025

/s/ Melanie M. Blunschi
LATHAM & WATKINS LLP
 Melanie M. Blunschi (SBN 234264)
melanie.blunschi@lw.com
 Kristin Sheffield-Whitehead (SBN 304635)
kristin.whitehead@lw.com
 505 Montgomery Street, Suite 2000
 San Francisco, CA 94111-6538
 Telephone: 415.395.5942

Michele D. Johnson (SBN 198298)
michele.johnson@lw.com
 650 Town Center Drive, 20th Floor
 Costa Mesa, CA 92626
 Telephone: 714.540.1235

Andrew B. Clubok (*pro hac vice*)
andrew.clubok@lw.com
 555 Eleventh Street NW, Suite 1000
 Washington, D.C. 20004
 Telephone: 202.637.2200

GIBSON, DUNN & CRUTCHER LLP
 Elizabeth K. McCloskey (SBN 268184)
EMcCloskey@gibsondunn.com
 Abigail A. Barrera (SBN 301746)
ABarrera@gibsondunn.com
 One Embarcadero Center, Suite 2600
 San Francisco, CA 94111-3715
 Telephone: 415.393.8200

Christopher Chorba (SBN 216692)
 333 South Grand Avenue
 Los Angeles, CA 90071
 Telephone: 213.229.7503
CChorba@gibsondunn.com

*Counsel for Defendant Meta Platforms, Inc.
 (formerly known as Defendant Facebook, Inc.)*

23 Dated: July 20, 2025

/s/ Diana Zinser
 Diana J. Zinser (*pro hac vice*)
 Jeffrey L. Kodroff (*pro hac vice*)
SPECTOR ROSEMAN & KODROFF, P.C.
 2001 Market Street, Suite 3420
 Philadelphia, PA 19103
 Tel: (215) 496-0300
 Fax: (215) 496-6611
dzinser@srkattorneys.com
jkodroff@srkattorneys.com

1
2 *Interim Co-Lead Counsel for Plaintiffs and the*
3 *Class*

4 Carol C. Villegas (*pro hac vice*)
5 Michael P. Canty (*pro hac vice*)
6 Danielle Izzo (*pro hac vice*)
7 Jake Bissell-Linsk (*pro hac vice*)
8 **LABATON KELLER SUCHAROW LLP**
9 140 Broadway
10 New York, NY 10005
11 Tel: (212) 907-0700
12 Fax: (212) 818-0477
13 cvillegas@labaton.com
14 mcanty@labaton.com
15 dizzo@labaton.com
16 jbissell-linsk@labaton.com

17 *Interim Co-Lead Counsel for Plaintiffs and the*
18 *Class*

19 Christian Levis (*pro hac vice*)
20 Amanda Fiorilla (*pro hac vice*)

21 **LOWEY DANNENBERG, P.C.**
22 44 South Broadway, Suite 1100
23 White Plains, NY 10601
24 Tel.: (914) 997-0500
25 Fax: (914) 997-0035
26 clevis@lowey.com
27 afiorilla@lowey.com

28 *Interim Co-Lead Counsel for Plaintiffs and the*
29 *Class*

30 James M. Wagstaffe (SBN 95535)
31 **ADAMSKI MOROSKI MADDEN**
32 **CUMBERLAND & GREEN LLP**
33 P.O. Box 3835
34 San Luis Obispo, CA 93403-3835
35 Tel: (805) 543-0990
36 Fax: (805) 543-0980
37 wagstaffe@wvbrlaw.com

38 *Counsel for Plaintiffs Erica Frasco and Sarah*
39 *Wellman*

40 Ronald A. Marron (SBN 175650)
41 Alexis M. Wood (SBN 270200)

1 Kas L. Gallucci (SBN 288709)
 2 **LAW OFFICES OF RONALD A. MARRON**
 3 651 Arroyo Drive
 4 San Diego, CA 92103
 5 Tel: (619) 696-9006
 Fax: (619) 564-6665
 ron@consumersadvocates.com
 alexis@consumersadvocates.com
 kas@consumersadvocates.com

6 *Counsel for Plaintiffs Jennifer Chen and Tesha*
 7 *Gamino*

8 Kent Morgan Williams (*pro hac vice*)
WILLIAMS LAW FIRM
 9 1632 Homestead Trail
 Long Lake, MN 55356
 Tel: (612) 940-4452
 williamslawmn@gmail.com

10 William Darryl Harris, II (*pro hac vice*)
HARRIS LEGAL ADVISORS LLC
 11 3136 Kingsdale Center, Suite 246
 Columbus, Ohio 43221
 Tel: (614) 504-3350
 Fax: (614) 340-1940
 will@harrislegaladvisors.com

12 *Counsel for Plaintiffs Leah Ridgway and Autumn*
 13 *Meigs*

14 Dated: July 20, 2025

15 /s/ Brenda R. Sharton
 16 Brenda R. Sharton (*pro hac vice*)
DECHERT LLP
 17 One International Place
 18 100 Oliver Street
 Boston, MA 02110
 Tel: (617) 728-7100
 Fax: (617) 426-6567
 brenda.sharton@dechert.com

19 **DECHERT LLP**
 20 Benjamin M. Sadun (SBN 287533)
 US Bank Tower
 21 633 West 5th Street, Suite 4900
 Los Angeles, CA
 Tel: (213) 808-5700
 Fax: (213) 808-5760
 benjamin.sadun@dechert.com

22 *Counsel for Defendant Flo Health, Inc.*

SIGNATURE ATTESTATION

I am the ECF User whose identification and password are being used to file the foregoing Jointly Proposed Revisions to Proposed Preliminary Jury Instructions. Pursuant to L.R. 5-1(i)(3) regarding signatures, I, Melanie M. Blunschi, attest that concurrence in the filing of this document has been obtained.

DATED: July 20, 2025

/s/ *Melanie M. Blunschi*
Melanie M. Blunschi